

Endangered and Threatened Wildlife and Plants; Proposal To Determine *Hymenoxys Texana* To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The service proposes to determine a plant, *Hymenoxys texana*, to be an endangered species. This plant occurs on both public and private land in Harris County, Texas. The three known populations are currently being threatened by housing and road development of the area. There is no current management plan for *Hymenoxys texana*, nor is there State or Federal protection. A final determination of *Hymenoxys texana* to be an endangered species will implement the protection provided by the Endangered Species Act of 1973, as amended. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by May 6, 1985. Public hearing requests must be received by April 22, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 421 Gold Avenue, SW., Room 407, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Botanist, Endangered Species Staff, Albuquerque, New

Mexico (see ADDRESSES above) (505-766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Hymenoxys texana was collected by F.W. Thurow in 1889 and 1890 in the vicinity of Hockley, Texas. Coulter and Rose (1891) described this new species as *Actinella texana*. Greene (1898) transferred this species to the genus *Picradenia*. Cockerell (1904) later transferred this species to the genus *Hymenoxys*. An additional specimen was also collected by Palmer around 1879-1880 from southwest Texas, between the Nueces and Frio Rivers on the Old San Antonio Road. However, recent field research has been unsuccessful in relocating this population (Mahler pers. comm. 1984). Three current populations of *Hymenoxys texana* have been located near Houston in Harris County, Texas (Mahler 1982). Two of the existing populations are located on private property in proximity to a current housing development area. However, one small population is located on public land adjacent to a county road right-of-way (Harris County, Department of Right-of-way pers. comm., 1984).

Hymenoxys texana is a member of the aster family. It is a small single stemmed or branching annual reaching up to 10 centimeters (cm) (3.9 inches) tall. The basal leaves are 4 to 5 millimeters (mm) (.16-.20 inches) broad with entire to toothed margins. Upper stem leaves become linear with entire margins. The flower heads are 4 to 6 mm (.16-.23 inch) tall, yellowish, with phyllaries partially indurate and keeled, in two series which are united basally. Flowering usually occurs in late March to early April. The three known populations of *Hymenoxys texana* occur in the northern part of the Gulf Coastal Prairie. They are found in poorly-drained swales or depressions in open grasslands with few other plants. The surrounding prairie vegetation is composed of plants measuring about 10 cm (3.9 inches) tall, with none being over 15 cm (5.9 inches) tall. These largely barren areas are sparsely vegetated with scattered individuals of

an umbellifer (*Limnoscium pumilum*) and a blue-green algae (*Nostoc* sp.) on the soil. The population biology and ecology of *Hymenoxys texana* are relatively unknown.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on December 15, 1974. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) of the Act, now incorporated in section 4(b)(3)(A), and of its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. *Hymenoxys texana* was included in the 1974 Smithsonian report, the notice of July 1, 1975, and the proposal of June 16, 1976.

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn, although a 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, *Federal Register* (44 FR 70796), the Service published a notice of the withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired. A revised notice for plants was published in the December 15, 1980, *Federal Register* (45 FR 82480) and included *Hymenoxys texana* as a category 1 species. Category 1 comprises taxa for which the Service has substantial information on biological vulnerability and threats to support the appropriateness of proposing to list the taxa as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Hymenoxys texana*, was October 13, 1983. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing *Hymenoxys texana* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notice of the 1983 finding was published on January 20, 1984 (49 FR 2485). Such a finding

requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made; this proposed rule constitutes the finding that the petitioned action is warranted, and proposes to implement the action, in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424; see 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hymenoxys texana* (Coulter and Rose) Cockerell are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The main threat to *Hymenoxys texana* is habitat destruction. The three known populations occupy a total area of approximately 490 square meters (1600 square feet) and occupy in proximity to either a housing development or a road. They are especially vulnerable to accidental disturbance. A portion of one population has already been destroyed by the enlarging and paving of a county road. It is the policy of Harris County to update, maintain, and improve the county roads as needed (Harris County Services, pers. comm., 1984). Therefore, without proper protection planning, this small population is subject to possible elimination if any repairs, maintenance, or updating takes place in the near future. If current housing construction increases, as anticipated, along with road improvements, the few remaining populations could be severely damaged, or even destroyed.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Commercial trade in this plant is not known to exist, but potential exists for uncontrolled collecting and vandalism. The populations on private land would not be protected from taking by the Endangered Species Act, and all three populations are easily accessible.

C. Disease or predation. There is no known threat to this plant from disease or predation.

D. The inadequacy of existing regulatory mechanisms. Currently, *Hymenoxys texana* is not protected by

either Federal or State laws or regulations.

E. Other natural or manmade factors affecting its continued existence. The limited distribution of approximately 490 square meters (1600 square feet) in Harris County and small number of known populations (3) make the existence of this species particularly precarious. It is especially precarious when future housing and road development, which could result in a significant loss in the numbers of individuals, are considered. Because of the low numbers of plants, there is a small gene pool, resulting in a possibly reduced ability of the species to tolerate stress.

The Service has carefully assessed the best scientific & commercial information available regarding the past, present, and future threats faced by this species in determining to proposed this rule. Based on this evaluation, the preferred action is to list *Hymenoxys texana* as endangered without critical habitat. Endangered status seems appropriate because portions of one population have been destroyed by the enlarging and paving of a county road, while the other two populations remain imminently threatened by a nearby housing development. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time.

The Act does not protect endangered plants from taking or vandalism on lands that are not under Federal jurisdiction. The habitat of *Hymenoxys texana* is located along a highway and is easily accessible. Listing of a species, with attendant publicity, highlights its rarity and attractiveness to collectors. Determining critical habitat for this species would make it more vulnerable to taking by collectors and to vandalism. Therefore, it would not be prudent to determine critical habitat for *Hymenoxys texana* at this time. The location of populations of this plant could be brought to the attention of Harris County and other involved parties through regular communication channels. No net benefit would accrue from designating critical habitat for this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of its critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. However, *Hymenoxys texana* is not known to occur on Federal lands, and no Federal involvement with this species is currently known or expected.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Hymenoxys texana*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell

or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and state conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition would apply to *Hymenoxys texana*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Hymenoxys texana* occurs on private land and, at present, no populations are known to exist on Federal land. It is expected that few collecting permits for the species would ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903 or FTS 235-1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Hymenoxys texana*;

(2) The location of any additional populations of *Hymenoxys texana* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Hymenoxys texana*.

Final promulgation of the regulation on *Hymenoxys texana* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

Literature Cited

- Cockerell, T.D.A. 1904. The North American species of *Hymenoxys*. Bulletin of Torrey Botanical Club 31(9):481-509.
Coulter, J.M., and J.N. Rose. 1891. *Actinella (Hymenoxys) texana*, n. sp. Botanical Gazette 16:27-28.
Greene, E.L. 1898. Studies in the Compositae VII. Pittonia 3:264-298.
Mahler, W.F. 1982. Status report on *Hymenoxys texana*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 10 pp.

Author

The primary author of this proposed

rule is Peggy Olwell, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972). The preliminary listing package was provided by Catherine Coats, Herbarium, Southern Methodist University, Dallas, Texas 75275. The editor is LaVerne Smith, Office of Endangered Species, Washington, D.C. 20240 (703/235-1975 or FTS 235-1975). Status information was provided by Dr. W.F. Mahler, Herbarium, Southern Methodist University, Dallas, Texas 75275 (214/692-2257).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*)

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family						
Hymenoxys texana.....	No common name.....	U.S.A. (TX).....	E		NA	NA

Dated: February 8, 1985.

J. Craig Potter,
Acting Assistant Secretary for Fish and Wildlife and Parks.
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